

No. 14-0016 RV

A decision on the pleadings is a decision without hearing based solely on the complaint and the answer. The commission may grant a motion for decision on the pleadings if a party's pleading, taken as true, entitles another party to a favorable decision.

Facts Taken as True for Purposes of Ruling on the Motion

Based upon the complaint, which we take as true for purposes of ruling on the motion for decision on the pleadings, we find the following facts:

1. Lemken's maiden name was Kathleen Dechman. She owned a car titled in that name.
2. Lemken and her spouse purchased a new motor vehicle.
3. Because the new car was titled differently, Lemken was not able to transfer the plates.

She requested a refund on the unused portion.¹

4. By letter dated November 20, 2013, the Director denied her request.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions. Section 621.050, RSMo 2000.² Lemken has the burden to prove that she is entitled to a refund. *Id.* Our duty is not merely to review the Director's decision, but to independently apply existing law to the facts and render the ultimate administrative decision. *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

Lemken asks for a refund because she cannot transfer the plates and tabs to another vehicle. The Director argues that neither he nor this Commission has the discretion to issue a refund under these circumstances. The Director is correct.

A refund is a limited waiver of sovereign immunity and is not allowed unless expressly permitted by statute. *Community Fed. Sav. & Loan Ass'n v. Director of Revenue*, 796 S.W.2d 883, 885 (Mo. banc 1990). "When a state consents to be sued, it may be proceeded against only in the manner and to the extent provided by the statute; and the state may prescribe the procedure

¹ No evidence in the record indicates when Lemken surrendered her plates, when the plates would have expired, when Lemken asked for the refund, or how much the requested refund was, although Lemken's complaint states she believes the amount is "close to \$50.00."

² Statutory references are to RSMo Supp. 2013, unless otherwise noted.

to be followed and such other terms and conditions as it sees fit.” *State ex rel. Brady Motorfrate, Inc. v. State Tax Comm’n*, 517 S.W.2d 133, 137 (Mo. 1974).

Missouri statutes provide for refunds or credits against unused license plates and tabs from motor vehicles only in limited circumstances. Section 301.121, for example, provides for a refund of certain amounts paid when a license plate is surrendered, but only for commercial vehicles registered in excess of 54,000 pounds. By contrast, § 301.140.7, which applies to other motor vehicles, provides:

Upon the transfer of ownership of any currently registered motor vehicle wherein the owner cannot transfer the license plates due to a change of vehicle category, **the owner may surrender the license plates issued to the motor vehicle and receive credit for any unused portion of the original registration fee against the registration fee of another motor vehicle.** Such credit shall be granted based upon the date the license plates are surrendered. **No refunds shall be made on the unused portion of any license plates surrendered for such credit.**

Section 301.140.7 allows a credit for the unused portion of the original registration fee against the registration fee of another motor vehicle upon transfer of ownership of a vehicle when the owner cannot transfer the license plates due to a change of vehicle category. Based upon the facts before us, this subsection does not apply to Lemken. This subsection expressly does not allow a refund. Nor does § 301.140.3, which allows a reduced transfer fee when license plates are transferred from a motor vehicle that will no longer be operated to a newly purchased motor vehicle by the owner of such vehicles.

Thus, when we consider the general principles of law governing refunds, and examine the pertinent statutes, we find no law authorizing a refund to Lemken under these circumstances. We conclude that none exists. We may do only what the law allows us to do, and neither the Director nor this Commission may change the law. *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985). Therefore, we must deny Lemken’s request for a refund.

Summary

Lemken is not entitled to a refund of the fees she paid for the license plates and tabs that she could not transfer or use when she purchased a new vehicle.

SO ORDERED on February 28, 2014.

/s/ Karen A. Winn

KAREN A. WINN

Commissioner